

BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

In Re: J.M. George and Associates)
Personal Property Account No. 113003) Davidson County
Tax year 2007)

INITIAL DECISION AND ORDER

Statement of the Case

The Davidson County Assessor of Property ("Assessor") has valued the subject property for tax purposes as follows:

APPRAISAL	ASSESSMENT
\$42,700	\$12,810

On August 6, 2007, the taxpayer filed an appeal with the State Board of Equalization ("State Board"). As indicated on the appeal form, the property in question was not appealed to the Metropolitan Board of Equalization ("county board") during its regular 2007 session.

The undersigned administrative judge conducted a hearing of this matter on September 18, 2007 in Nashville. In attendance at the hearing were the appellant James M. George, Esq. (of J.M. George and Associates) and Assessor's representative Kenneth Vinson.

Findings of Fact and Conclusions of Law

The appellant is a sole practitioner whose law office is located at 1007 Murfreesboro Road in Nashville. The personal property used (or held for use) in that office was "forced assessed" at nominal sums from tax years 2004 through 2006.

In January and February, 2007, as explained in a letter from Assistant Professor Jeffry T. Watson, M.D. of the Vanderbilt Medical Center, Mr. George was hospitalized for surgical treatment of certain hand and foot infections. He remained under Dr. Watson's care until March 22, 2007, when Mr. George was referred to another medical specialist. Due apparently to the effects of adult-onset diabetes, the healing process lasted until mid-August, 2007.

Meanwhile, not having received a 2007 tangible personal property schedule by the March 1 deadline specified in Tenn. Code Ann. section 67-5-903(b), the Assessor made another forced assessment on the subject account. Unfortunately for the taxpayer, the new assessed value was upwards of seven times higher than the previous one (for tax year 2006). In accordance with Tenn. Code Ann. section 67-5-903(c), the Assessor's office sent notice of this increased assessment to his business address.

Mr. George's assistant was able to help in the management of his office during his lengthy period of recovery, but she was not knowledgeable or responsible with respect to the handling of his tax-related affairs. Thus neither the taxpayer nor an authorized agent appeared before the county board within the allotted time to contest the forced assessment of the subject property for tax year 2007.

Generally, a taxpayer who is properly notified of an assessment must first make complaint to the local board of equalization before appealing to the State Board. See Tenn. Code Ann. section 67-5-1412(b); Tenn. Atty. Gen. Op. 92-62 (October 8, 1992). However, as amended by Chapter No. 133 of the Public Acts of 2007, Tenn. Code Ann. section 67-5-1412(e) provides (in relevant part) that:

The taxpayer has the right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the board shall accept such appeal from the taxpayer up to March 1 of the year subsequent to the year in which the time for appeal to the state board began to run.

The Assessment Appeals Commission (appointed by the State Board under authority of Tenn. Code Ann. section 67-5-1502) has historically construed this remedial statute to require "a showing of circumstances beyond the taxpayer's reasonable control that prevent the taxpayer from appealing to the county board." Associated Pipeline Contractors, Inc. (Williamson County, Tax Year 1992, Final Decision and Order, August 11, 1994), p. 2.

In the opinion of the administrative judge, the evidence of illness and disability adduced by the appellant in this proceeding is sufficient to meet the stated requirement. To be sure, Mr. George might well have avoided a forced assessment of this magnitude if he had duly filed tangible personal property tax returns in the preceding tax years.¹ Those past omissions do not, however, necessarily preclude relief under the reasonable cause statute for the tax year under appeal.

Under Tenn. Code Ann. section 67-5-903(d), relief from a forced assessment is expressly "conditioned upon the taxpayer filing with the board of equalization a complete listing or schedule of all the tangible personal property owned or used by the taxpayer in the operation of the taxpayer's business on the same form as required to be filed with the assessor."

Order

It is therefore ORDERED that, within ten (10) days after the date of entry hereof, the taxpayer shall file the completed schedule required by Tenn. Code Ann. section 67-5-903(d) with the administrative judge and send a copy to the Assessor's office. Within five (5) days after receipt of such schedule, the Assessor shall inform the administrative judge in writing whether or not she accepts the value claimed thereon. If the Assessor does accept such value, the subject property shall be appraised and assessed accordingly for tax year 2007. If the Assessor does not accept such value, this matter will be reset for hearing upon proper notice.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of

¹ See State Board Rule 0600-5-.06(5)(a).

the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 5th day of November, 2007.



PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: James George, Attorney, J.M. George and Associates
Jo Ann North, Davidson County Assessor of Property

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